

**RESPONSE**

Claim 22 has been amended. No claims have been cancelled. No new claims have been added. Claims 1, 3-16 and 18-22 remain pending in the application.

***Objections/Rejections  
Under 35 U.S.C. § 112***

***1.0 The Examiner has objected to claim 22 as indefinite for failing to show overlapping of the primary rib and the legs.***

Applicant respectfully disagrees that claim 22 is indefinite. Claim 22 recites "at least one primary rib formed within the main beam and the strut which ... (ii) ***longitudinally*** overlaps the first leg and the second leg ..." (Emphasis Added). Figures 1-4 and 5 support this claimed element. Referring to Figure 2, the rib (131) clearly longitudinally overlaps the first leg (110) as the rib (131) has a longitudinal length that starts proximate the strut (40) and the distal longitudinal end (112) of the first leg (110) and runs in the second longitudinal direction ( $x^2$ ) toward the proximal longitudinal end (111) of the first leg (110). Hence, the rib longitudinally overlaps the first leg.

In order to expedite allowance of this application, Applicant has amended claim 22 to recite that "at least one primary rib formed within the main beam and the strut which ... (ii) is latitudinally offset and longitudinally overlaps the first leg and the second leg ..." for purposes of clarifying the spatial relationship between the primary rib and the legs.

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Eddy***Objections/Rejections  
Under 35 U.S.C. §103***

**2.0** *The Examiner has rejected claims 1, 3-16 and 18-22 as obvious over Ramser (United States Patent No. 3,053,491) in view of Schwartz (United States Patent No. 3,041,033) in further view of Odekirk (United States Patent No. 4,294,422).*

***Summary of Cited References***

Ramser discloses an eaves trough support bracket comprising a main beam, first leg, and second leg. The lower portions of the first and second legs are bent inward along a longitudinal bend line so as to form a nearly enclosed base on the bracket. The first and second legs also extend in the second transverse direction with the transverse height of the legs remaining substantially unchanged along the longitudinal length of the bracket.

Schwartz discloses a shelving bracket comprising a main beam, first leg, and second leg. The main beam, first leg, and second leg define a concavity accessible from a first transverse direction.

Odekirk discloses an eaves trough support bracket comprising a main beam, a first longitudinally elongated side rib, second longitudinally elongated side rib, and connection element. The connection element has a strut and tab. A rib is also disclosed along a bend line along the transition line from the main beam to the strut. The first and second side ribs extend in the second transverse direction with the transverse height of the side ribs remaining substantially unchanged along the longitudinal length of the bracket.

***Summary of Claimed Invention***

**A First Embodiment** of the present claimed invention (claims 1, 3-16, and 18-20) is directed to an eaves trough support bracket having a first leg extending in a second transverse direction from the first edge of a main beam with a proximal longitudinal end substantially transversely aligned with a proximal end of the main beam and a second leg extending in the second transverse direction from a second edge of the main beam with a proximal longitudinal end substantially transversely aligned with the proximal end of the main beam. The main beam,

first leg, and second leg define a concavity accessible from a first transverse direction whereby the support bracket is transversely nestable. A connection element extends in a first transverse direction from the distal end of the main beam with a longitudinally extending tab transversely spaced from the main beam in the first transverse direction a distance of about 0.4 to 0.6 inches from the first surface of the main beam.

**A Second Embodiment** of the present claimed invention (claim 21) is directed to an eaves trough support bracket having a main beam, first leg and second leg. The first and second legs extend in a second transverse direction. The first leg has a transverse height that tapers in the second transverse direction with a height at the longitudinal center of the main beam less than one half the transverse height at the proximal longitudinal end of the first leg. The second leg has a transverse height that tapers in the second transverse direction with a height at the longitudinal center of the main beam less than one half the transverse height at the proximal longitudinal end of the second leg.

**A Third Embodiment** of the present claimed invention (claim 22) is directed to an eaves trough support bracket having a main beam, connection element, first leg, second leg, a first bend line, second bend line, at least one primary rib, and at least one secondary rib. The connection element includes a strut and a tab. The at least one primary rib is formed within the main beam and the strut which extends across and substantially perpendicular to the first bend line and overlaps the first and second leg improving the strength of the bracket. The at least one secondary rib is formed within the strut and tab and extends across and substantially perpendicular to the second bend line and transversely overlaps the at least one primary rib improving the strength of the bracket.

### ***Legal Basis***

To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation; either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success.

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Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must be found in the prior art, NOT in applicant's disclosure. In re Vaeck, 947 F.2d 488, 20 U.S.P.Q.2d 1438 (Fed. Cir. 1991). See, M.P.E.P. § 2143.

As to the first criteria, it is necessary to ascertain whether or not the reference motivates one of ordinary skill in the relevant art, having the reference before him, to make the proposed substitution, combination, or modification. In re Linter, 458 F.2d 1013, 173 U.S.P.Q. 560, 562 (CCPA 1972). Obviousness can only be established where there is some teaching, suggestion or motivation in the prior art or in the knowledge generally available to one of ordinary skill in the art, to combine the references and produce the claimed invention. In re Fine, 837 F.2d 1071, 5 U.S.P.Q. 1596 (Fed. Cir. 1988); In re Jones, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). See, M.P.E.P. § 2143.01.

#### FIRST EMBODIMENT

Ramser, Schwartz and Odekirk do NOT provide the requisite motivation to modify the eaves trough bracket of Ramser to have (i) an open base as disclosed in Schwartz, nor (ii) a connection element on the distal end of the main beam with a longitudinally extending tab transversely spaced from the main beam a distance of about 0.4 to 0.6 inches from the first surface of the main beam.

#### Open Base

While Schwartz discloses a bracket with an open base, the bracket is for shelving and the written description indicates the open base is used for positioning the bracket over wall studs. Neither Schwartz nor Odekirk disclose a bracket that is nestable. Persons skilled in the art would NOT normally look to shelving bracket technology to design an eaves trough gutter bracket. Due to the highly divergent uses of the Ramser invention relative to the Schwartz and Odekirk inventions, persons skilled in the art would NOT be motivated to combine the teachings of these references. It is only through the use of forbidden hindsight that a motivation is found to combine these references.

Upwardly Spaced Connection Element Tab

The First Embodiment of the Present Claimed Invention is configured and arranged with a "return tab" on the connection element which is transversely spaced from the main beam a distance of about 0.4 to 0.6 inches from the first surface of the main beam. Such spacing of the return tab from the main beam positions the main beam a distance into the gutter effective for hiding the main beam from ground level view even when the gutter begins to sag. It is well known within the industry that the curbside appeal of a home is substantially diminished if the gutter brackets are visible from ground level. The First Embodiment of the Present Claimed Invention significantly reduces the likelihood that the brackets will become visible from ground level even if the gutter begins to sag.

Ramser discloses a gutter bracket with a connection element on the distal end of the bracket for engaging a lip [5] on the upper edge of the front wall of the gutter [4]. The connection element is a hook [11] with a longitudinally extending return portion which is transversely spaced from the main beam a distance barely sufficient to accommodate passage of the lip [5] on the gutter between the horizontal web [7] of the bracket and the return portion of the hook [11] (*e.g.*, about 0.1 to 0.2 inches). See, FIG. 3. Ramser minimizes the transverse height of the gap formed by the hook [11] as the forward end of the bracket (*i.e.*, the forward ends of the horizontal web [7] and the vertical sides [8]) must fit snugly against the front wall of the gutter [4] in order to prevent the bracket from damaging the gutter when the fastener [20] is driven into the rear wall of the gutter [1]. See, FIG 4. Accordingly, Ramser does not disclose, teach or suggest a connection element on the distal end of the main beam wherein the "return tab" is transversely spaced from the main beam a distance of about 0.4 to 0.6 inches from the first surface of the main beam.

Schwartz is not directed to a gutter bracket and therefore does not provide as "return tab".

Odekirk discloses a gutter bracket with a main beam having a portion which extends well above the "return tab" on the connection element.

## SECOND EMBODIMENT

Ramser, Schwartz and Odekirk do NOT provide the requisite motivation to modify the eaves trough bracket of Ramser to have a first and second leg that have transverse heights that taper in the second transverse direction with a transverse height at the longitudinal center of the main beam of less than one half the transverse height at the proximal longitudinal end of the second leg. Odekirk discloses a gutter bracket with legs with a uniform transverse height along the entire length of the main beam. While Schwartz discloses a bracket with tapering legs, the bracket is for shelving and does not disclose a required ratio of the taper. Persons skilled in the art would NOT normally look to shelving bracket technology to design an eaves trough gutter bracket. Due to the highly divergent uses of the Ramser and Schwartz devices, persons skilled in the art would NOT be motivated to combine the teachings of these references. It is only through the use of forbidden hindsight that a motivation is found to combine these references.

## THIRD EMBODIMENT

The Third Embodiment of the present claimed invention is directed to a bracket with a primary rib which overlaps the legs.

Ramser discloses an eaves trough support bracket comprising a main beam and a connection element. The Ramser bracket has no ribs. Accordingly, the Ramser bracket does not disclose, teach or suggest a primary rib which overlaps the legs.

Schwartz discloses a shelving bracket comprising a main beam and two legs. The Schwartz bracket has no ribs. Accordingly, the Schwartz bracket does not disclose, teach or suggest a primary rib which overlaps the legs.

Odekirk discloses an eaves trough support bracket. The Odekirk bracket comprises a main beam [20] and connection element [60]. The connection element [60] has a strut [62] and tab [64] with a rib [unnumbered] formed along the bend line [unnumbered] between the main beam [20] and the strut [62]. Odekirk does not disclose sides on the support bracket, but does disclose

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side ribs [22] which extend along the longitudinal length of the main beam [20]. However, as seen clearly in FIG 1, the rib [unnumbered] which extends across the bend line [unnumbered] does not longitudinally overlap the side ribs [22].

### CONCLUSION

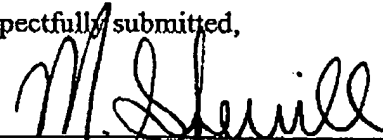
Applicant respectfully submits that all pending claims (claims 1, 3-16 and 18-22) are in condition for allowance.

Date

12 Dec 03

Respectfully submitted,

By



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